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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WENDY CHOWNING and
LOURDES CASAS, individually and
on behalf of all others similarly
situated,

Plaintiffs,

v.

KOHL'S DEPARTMENT STORES,
INC., a Delaware Corporation;
KOHL'S CORPORATION; and
DOES 1 through 20, inclusive,
Defendants.

CASE NO. 2:15-cv-8673-RGK-SP

CLASS ACTION

JOINT STIPULATION RE:
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

DISCOVERY MATTER

Date: January 26, 2016
Time: 9:30 a.m.
Magistrate Judge: Sheri Pym
Courtroom: 3 or 4 – 3rd Floor
Discovery Cut-Off: None Set
Trial Date: None Set
Pre-Trial Conference Date: None Set

1 This Joint Stipulation is submitted pursuant to Local Rule 37-2 in
 2 connection with Plaintiff Wendy Chowning's ("Plaintiff" or "Chowning")
 3 motion to compel Defendant Kohl's Department Stores, Inc. to produce
 4 documents responsive to Plaintiff's Request for Production of Documents, Set
 5 One. The parties have met and conferred in good faith to resolve this dispute,
 6 but were unable to do so. Pursuant to Local Rule 37-2.1, no scheduling order has
 7 been issued, but a copy of the district court's order setting an initial case
 8 management conference is attached as Exhibit 1 to the accompanying
 9 Declaration of Matthew J. Zevin ("Zevin Decl."), and the Court's order setting a
 10 class certification briefing schedule is attached as Exhibit 2 to the Zevin Decl.

11 I. INTRODUCTION

12 A. Plaintiff's Introduction

13 This case arises out of Defendants Kohl's Corp. and Kohl's Department
 14 Stores, Inc.'s (collectively, "Defendants" or "Kohl's") false price comparison
 15 advertising scheme. Plaintiff generally alleges that Kohl's advertises its private
 16 and exclusive branded (sold "only at Kohl's") products with both a purportedly
 17 discounted "sale" price and a false and misleading "regular" price that are
 18 collectively designed to create the impression that each product is regularly
 19 offered and sold at, (and therefore worth), more than the deeply discounted
 20 "sale" price. Since Kohl's rarely, if ever, offers or sells products at the fictitious
 21 "regular" price, consumers do not receive the discount that Kohl's promises.

22 Plaintiff brings claims under California's: Unfair Competition Law, Bus.
 23 & Prof. Code §§ 17500, et seq. (the "UCL"), False Advertising Law, Bus. &
 24 Prof. Code §§ 17501 ("FAL"), section 1770(a)(13) of the Consumers Legal
 25 Remedies Act, Cal. Civ. Code §§ 1750, et seq. ("CLRA"), and the Federal Trade
 26 Commission Act, 15 U.S.C. § 45(a)(1) ("FTCA"), which is incorporated under
 27 the UCL.¹

28 ¹ The complaint was filed on behalf of two Plaintiffs, Ms. Chowning and

1 Plaintiff seeks to represent a class, currently defined as: “All persons who,
2 while in the state of California and between July 21, 2011 and the present,
3 purchased from Kohl’s one or more private or exclusive branded items advertised
4 at a discount of 30% or more from a stated “original” or “regular” price and who
5 have not received a refund or credit for their purchase(s).”²

6 Plaintiff alleges that she purchased at least two private or exclusive
7 branded products in reliance on the purported discount, which was represented to
8 be the difference between the stated original price and the promised sale price.
9 Specifically, she purchased a Jennifer Lopez (a Kohl’s exclusive brand) Dress
10 advertised with an original price of \$70.00 on sale for 70% off at \$21.00. Dkt.
11 No. 1 at ¶31. Later, Plaintiff purchased a Sonoma Life+Style (a Kohl’s private
12 label brand) Robe that was advertised as having a 40% discount (\$46.00 regular
13 price on sale for \$26.99). *Id.* at ¶32. In discovery, Plaintiff has provided Kohl’s
14 with receipts demonstrating at least two additional purchases relevant to this
15 lawsuit, and she is amending her complaint to include such transactions.

16 This case was originally filed in the Southern District of California but
17 was transferred to this Court upon motion by Kohl’s. Dkt. Nos. 20-21. Upon
18 transfer, Plaintiff immediately moved for relief from Local Rule 23-3 in order to
19 provide sufficient time to conduct discovery prior to moving for class
20 certification. Dkt. No. 26; Zevin Decl. ¶4. The Court denied such relief and
21 ordered that Plaintiff’s motion for class certification be filed by February 2,
22 2016, which is 90 days after the date of transfer. Dkt. No. 29; Zevin Decl. Ex. 2.
23 Accordingly, Plaintiff wasted no time in serving discovery. At Plaintiff’s
24 request, the Parties conducted their Rule 26 meeting on November 11, 2015,
25 which was before the Court issued an order setting the initial case management

26
27 Lourdes Casas. Dkt. No. 1. However, Ms. Casas is withdrawing as a named
28 plaintiff, and any discovery disputes concerning Ms. Casas or her transactions
are therefore moot.

² See Complaint [Dkt. No. 1] at ¶36.

1 conference. Zevin Decl. 5. Two days later, on November 13, 2015, Plaintiff
2 served Kohl's with her Request for Production of Documents, Set One ("RFP").
3 *Id.* at ¶5 and. Ex. 3. On December 16, 2015, (thirty plus 3 days later), Defendant
4 served nothing but boilerplate objections and responses in which it flatly refused
5 to produce the vast majority of responsive documents and indicated that it would
6 "endeavor" to produce the few documents it would agree to produce by February
7 2, 2016. Zevin Decl. ¶6 and Ex. 4 at General Objection 2. Not coincidentally,
8 this is the same day that Plaintiff's class certification motion is due. The day after
9 receiving Defendant's response and objections, Plaintiff served Kohl's with a
10 letter identifying the issues in dispute and requested to meet and confer within 10
11 days pursuant to Local Rule 37-1. Zevin Decl. ¶7 and Ex. 5. Kohl's agreed to
12 meet and confer on the tenth day, December 28, 2015. Zevin Decl. ¶7.

13 During the meet and confer, the parties discussed several potential
14 compromises that would significantly limit the scope of Defendant's production.
15 Zevin Decl. ¶8. Most notably, Plaintiff proposed that Kohl's should initially
16 limit its production to responsive documents related to the private and/or
17 exclusive branded products purchased by Plaintiff (the two items described in the
18 complaint as well as those identified in receipts that she produced to Kohl's) and,
19 if the case is certified as a class action, the parties would meet and confer on the
20 broader requests pertaining to *all* private and exclusive branded products sold in
21 California during the class period. *Id.* Plaintiff's proposal is designed to (and
22 will) significantly reduce the time and expense necessary for Kohl's to complete
23 its production prior to class certification. While Kohl's counsel stated that he
24 would discuss this compromise with his clients, Kohl's has, to date, not
25 committed to it. *Id.* Unfortunately, there also remain several other discovery
26 requests which Defendant continues to refuse to respond to with anything but
27 objections.

28 Despite follow up communications, Kohl's has, to date, failed to produce a

1 single document; and it still has not committed to produce any documents in
2 advance of Plaintiff's deadline to move for class certification. *See* Zevin Decl. ¶¶
3 7-12 and Exs. 6, 7 and 8. Defendant's calculated delay in producing responsive
4 documents, as well as its continued reliance on boilerplate objections, are
5 without merit and risk imposing severe prejudice on Plaintiff. Indeed, Kohl's has
6 recently opposed class certification in another very similar case based on the
7 argument that counsel are "inadequate" under Rule 23(a)(4) because the
8 plaintiff's motion was devoid of the "evidentiary proof" required for class
9 certification. Zevin Decl. ¶13 and Ex. 9 at pages 12-14, 25. Kohl's seems to be
10 trying to manufacture the same argument here by improperly withholding
11 relevant documents and delaying its production.

12 **B. Defendant's Introduction**

13 Plaintiff Wendy Chowning filed this purported consumer class action
14 against Kohl's, a national department store, alleging that Kohl's has violated
15 California's Unfair Competition Law ("UCL"), California's False Advertising
16 Laws ("FAL"), and the Consumer Legal Remedies Act ("CLRA") by
17 "inflat[ing]" its "original" and/or "regular" prices in order to make its sales prices
18 appear more attractive. Complaint at ¶ 24. Plaintiff claims that she relied on this
19 advertising "in deciding to make" purchases from Kohl's. *Id.* at ¶ 20. Plaintiff
20 alleges that she purchased a dress "'on sale' for \$21.00" in reliance on an
21 advertisement falsely stating an advertised former price of \$70.00. *Id.* at ¶ 31.
22 She further alleges that she paid \$26.99 for a robe in reliance on an
23 advertisement falsely stating an advertised former price of \$46.00. *Id.* at ¶ 32.
24 Plaintiff seeks to represent, "[a]ll persons who, while in the state of California
25 and between July 21, 2011 and the present, purchased from Kohl's one or more
26 private or exclusive branded item advertised at a discount of 30% or more from a
27 stated 'original' or 'regular' price and who have not received a refund or credit
28 for their purchase[s]." *Id.* at ¶ 36.

1 Plaintiff served her RFPs on November 13, 2015. Declaration of E. Alex
 2 Beroukhim (“Beroukhim Dec.”), ¶ 2. Kohl’s timely served its written responses
 3 in Mid-December 2015. *Id.* at ¶ 3. Because a number of plaintiff’s document
 4 requests were overbroad, unduly burdensome, vague and/or unintelligible,
 5 Kohl’s offered to meet and confer with plaintiff. *Id.* at ¶ 5. Plaintiff requested a
 6 meet and confer on December 17, 2015, and Kohl’s made itself available on
 7 December 28, 2015, in the middle of the holiday season. *Id.* The parties
 8 completed their meet and confer on January 14, 2016 and were able to resolve
 9 most of their current disputes concerning plaintiff’s RFPs. *Id.* at ¶ 6.

10 After plaintiff agreed in writing, on January 5, 2016, to abide by the terms
 11 of the stipulated protective order until such time as it was entered by the Court,
 12 Kohl’s began making its rolling productions in response to the RFPs. *Id.* at ¶¶ 7-
 13 8. More specifically, on January 6, 2016, Kohl’s produced 338 pages of
 14 substantive documents responsive to plaintiff’s RFPs. *Id.* at ¶ 8. Kohl’s is
 15 working diligently to collect, review and process further documents for
 16 production, and will continue producing these documents on a rolling basis. *Id.*;
 17 *see* Order Granting in Part and Denying in Part Ex Parte Application to Shorten
 18 Time (Dkt. No. 39) (“[I]t appears both parties have worked diligently on this
 19 matter.”).

20 **REQUESTS FOR PRODUCTION AT ISSUE**

21 **General Objection No. 1**

22 Defendant’s General Objection No. 1 states:

23 Kohl’s objects to the date and location designated by plaintiff for
 24 production of documents. The Requests seek numerous categories of documents
 25 that require significant collection and review to produce to plaintiff, and it would
 26 be unduly burdensome to produce documents as demanded in the Requests.
 27 Accordingly, Kohl’s will endeavor to produce the requested documents by
 28 February 2, 2016.

Plaintiff's Contentions with Respect to General Objection No. 1

As Kohl's knows, February 2, 2016 is the deadline for Plaintiff to file her motion for class certification, and the Court has already rejected her request to extend that deadline. Meanwhile, in a separate but similar case, Kohl's has argued that other class counsel are "inadequate" for failing to support their motion for class certification with "evidence." Zevin Decl. Ex. 9 at pages 12-14, 25. Kohl's seems to be trying to manufacture the same argument here by improperly withholding relevant documents and delaying its production of relevant evidence until after the deadline for Plaintiffs' motion. Plaintiff served her document request in mid-November, and Kohl's has no valid justification for delaying its production.

Kohl's also has not supported its claim of "undue burden" with any evidence. Objections based on burden that are unsupported and unspecific should be rejected. *See In re Toys R Us-Delaware, inc. Fair and Accurate Credit Transaction Act (FACTA) Litig.*, No. ML 08-1980 MMM(FMOx), 2010 WL 4942645, at *5 (C.D. Cal. July 29, 2010). Moreover, Plaintiff has proposed a compromise that would significantly reduce the scope of Kohl's production, at least in the short term, yet Kohl's has not even responded whether it will accept that proposal, let alone completed the appropriate production.

Defendant's counsel also stated in the meet and confer on December 28, 2015 that Kohl's would agree to a "rolling production" as soon as a protective order is entered by the Court, but would not agree to a final deadline sufficiently in advance of Plaintiff's February 2, 2016 deadline to file a motion for class certification.³ Zevin Decl. ¶8. In response, Plaintiff agreed to abide by the terms of the proposed protective order even before it is entered, yet Defendant still

³ The parties previously agreed to a stipulated protective order, which was "lodged" by Kohl's. Dkt. No. 35. To date, the Court has not acted on protective order, and Plaintiff questions whether Kohl's properly presented it to the Court by way of a Notice of Lodging.

1 refuses to make a timely production. *Id.* at ¶8 and ¶11. Defendant provides no
2 rationale for its continued delay and it can only be surmised that it intends to
3 deprive Plaintiff of the very evidence that will support her motion for class
4 certification. Production is already overdue and should be compelled forthwith.

5 **Defendant's Contentions with Respect to General Objection No. 1**

6 Plaintiff's contention that Kohl's is attempting "to deprive Plaintiff of the
7 very evidence that will support her motion for class certification" is flatly
8 contradicted by the record. Kohl's has committed to completing its production in
9 response to Plaintiff's RFPs by February 2, 2016. Kohl's has clarified that it will
10 produce documents responsive to the RFPs on a rolling basis, and that it will
11 work in good faith to complete its production in advance of the February 2, 2016
12 deadline to the extent reasonably possible. Beroukhim Dec. at ¶ 4. Kohl's is
13 currently in the process of doing just that. *Id.* at ¶ 8.

14 Kohl's was clear during the meet and confer process that it could not
15 produce responsive documents, many of which are highly competitively-
16 sensitive, without protections that would adequately ensure their confidentiality.
17 *Id.* at ¶ 7. A protective order was not entered in this matter until January 7, 2016,
18 and plaintiff did not confirm in writing until the evening of January 5, 2016 that
19 she would agree to be bound by the stipulated protective order until such time as
20 it was entered by the Court. *Id.* at ¶ 7. Kohl's made its first production less than
21 24 hours thereafter, on January 6, 2016. *Id.* at ¶ 8. Accordingly, although
22 plaintiff asserts that Kohl's "provides no rationale for its continued delay,"
23 Kohl's did not produce documents before January 6, 2016 because doing so
24 would have compromised the confidentiality of its documents. Moreover,
25 Kohl's is currently working diligently to collect, review and process further
26 responsive documents for production, and will continue to produce these
27 documents on a rolling basis. *Id.* at ¶ 8; *see* Order Granting in Part and Denying
28 in Part Ex Parte Application to Shorten Time (Dkt. No. 39) ("[I]t appears both

1 parties have worked diligently on this matter.”).

2 **General Objections Nos. 12, 16, 17 and 18**

3 12. Kohl’s objects to each request, instruction, and definition to the
4 extent that it is overbroad insofar as it requests data regarding items not
5 purchased by plaintiff[], stores not shopped at by plaintiff[], or periods during
6 which plaintiff[] did not buy items from Kohl’s.

7 16. Kohl’s objects to the definitions of “Policy” and “Policies” as
8 overbroad, unduly burdensome, and not reasonably calculated to lead to the
9 discovery of relevant evidence proportional to the needs of the case to the extent
10 that they refer to information regarding items not purchased by plaintiff[], stores
11 not shopped at by plaintiff[], or periods during which plaintiff[] did not buy
12 items from Kohl’s. Therefore, all requests that use the term “Policy” or
13 “Policies” will be interpreted as requesting information regarding items
14 purchased by plaintiff[], stores shopped at by plaintiff[], or periods during which
15 plaintiff[] bought items from Kohl’s.

16 17. Kohl’s objects to the definition of “Store” as overbroad, unduly
17 burdensome, and not reasonably calculated to lead to the discovery of relevant
18 evidence proportional to the needs of the case to the extent that it requests
19 information regarding stores not shopped at by plaintiff[]. Therefore, all requests
20 that use the term “Store” will be interpreted as requesting information regarding
21 stores shopped at by plaintiff[].

22 18. Kohl’s objects to the definition of “Transaction” as overbroad,
23 unduly burdensome, and not reasonably calculated to lead to the discovery of
24 relevant evidence proportional to the needs of the case to the extent that it
25 requests information regarding items not purchased by plaintiff[], stores not
26 shopped at by plaintiff[], or periods during which plaintiff[] did not buy items
27 from Kohl’s. Therefore, all requests that use the term “Transaction” will be
28 interpreted as requesting information regarding items purchased by plaintiff[],

1 stores shopped at by plaintiff[], or periods during which plaintiff[] bought items
2 from Kohl's.

3 **Plaintiff's Contentions Regarding General Objections 12, 16, 17 and 18**

4 Collectively, these General Objections appear designed to thwart
5 Plaintiff's ability to obtain class discovery. This case was filed as a class action,
6 and Plaintiff intends to prove that common issues exist and predominate under
7 Federal Rules 23(a)(2) and 23(b)(3), and that Plaintiff's claims are typical under
8 Federal Rule 23(a)(3). Plaintiff is entitled to seek discovery related to the
9 proposed class and class allegations. *Vinole v. Countrywide Home Loans, Inc.*,
10 571 F.3d 935, 942-43 (9th Cir. 2009) ("[O]ften the pleadings alone will not
11 resolve the question of class certification and . . . some discovery will be
12 warranted.") (citing cases); *Nguyen v. Baxter Healthcare Corp.*, 275 F.R.C. 503,
13 506 (C.D. Cal. 2011 (noting that both "Supreme Court and Ninth Circuit
14 precedent supports the right of class counsel to conduct pre-certification
15 discovery . . ."). *See also Spann v. JCPenney Corp.*, 307 F.R.D. 508, 518 (C.D.
16 Cal. 2015) (citing classwide evidence used to show that false price comparison
17 advertising was a common "scheme" that was "rampant throughout California as
18 part of a massive, years-long pervasive campaign and was consistent across all of
19 J.C. Penney's private branded and exclusive branded [products].").

20 Simply put, Plaintiff intends to obtain the same type of evidence that was
21 submitted and relied upon in the *Spann* case to establish commonality, typicality
22 and predominance, and this includes details of all California-based transactions
23 concerning the products purchased by plaintiff, as well as the pricing policies and
24 price-offering histories of such products at all California stores (and California
25 internet transactions). *Spann*, 307 F.R.D. at 516 (citing expert analysis of sales
26 data that is relevant to "a number of issues related to class certification"); *id.* at
27 518 (citing additional evidence showing that products were rarely, if ever,
28 offered at regular price).

1 Plaintiff's request for production seeks a variety of similar documents in
 2 this case both for the specific products purchased by Plaintiff as well as for all
 3 class-wide products. During the meet and confer process, however, Plaintiff
 4 offered a significant compromise by which Kohl's would initially produce
 5 documents related only to the specific products purchased by Plaintiff and refrain
 6 from the larger production until after a class is certified. Kohl's has responded
 7 that it would consider this proposal but, to date, has not accepted it. In the
 8 meantime, no documents have been produced and the deadline for Plaintiff to file
 9 her motion for class certification continues to grow closer, all to the prejudice of
 10 Plaintiff.

11 **Defendant's Contentions Regarding General Objections 12, 16, 17 and 18**

12 The parties have reached a compromise on these Objections.

13 **Request for Production No. 2**

14 All Documents Concerning any research, study, analysis, report or survey
 15 Concerning retail prices, discounts, sale prices or price comparison advertising.
 16 This should include any such Documents in Kohl's possession, custody or
 17 control, regardless of whether or not they were drafted, created, prepared or
 18 produced for Kohl's.

19 **Response to Request for Production No. 2**

20 Kohl's hereby incorporates the Preliminary Statement and General
 21 Objections. Kohl's further objects that the request is overbroad and unduly
 22 burdensome with respect to, among other things, the products, stores, and period
 23 for which information is sought. Kohl's further objects that the request seeks
 24 information regarding products, stores, and periods, among other things, that is
 25 not relevant to any party's claims or defenses and not proportional to the needs
 26 of the case. Kohl's further objects that the request is vague, ambiguous, and
 27 unintelligible as to the terms "retail pricing," "price discounting," "price
 28 comparison" and/or "price comparison advertising policies" applicable to its

1 California Stores.” Kohl’s further objects to the extent that the request seeks
 2 trade-secret or confidential information, as no protective order is in place.

3 **Plaintiff’s Contentions with Respect to Defendant’s Response to RFP 2**

4 Plaintiff is entitled, as a matter of law, to discover “any non-privileged
 5 matter that is relevant to any party’s claim or defense...Generally, the purpose of
 6 discovery is to remove surprise from trial preparation so the parties can obtain
 7 evidence necessary to evaluate and resolve their dispute.” Fed. R. Civ. P.
 8 26(b)(1); *Duran v. Cisco Sys.*, 258 F.R.D. 375, 378 (C.D. Ca. 2009); *Moon v.*
 9 *SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005). “Relevant information
 10 for purposes of discovery is information ‘reasonably calculated to lead to the
 11 discovery of admissible evidence.’” *Withers. V. eHarmony, Inc.*, 267 F.R.D. 316,
 12 319 (C.D. Ca. 2010).

13 Defendant, as the party resisting discovery, has “the burden to show
 14 discovery should not be allowed, and [has] the burden of clarifying, explaining,
 15 and supporting [their] objections.” *Blankenship v. Hearst Corp.*, 519 F.2d 418,
 16 429 (9th Cir. 1975). Further, boilerplate objections or blanket refusals inserted
 17 into a response to a Rule 34 request for production of documents are insufficient
 18 to assert a privilege.” *Duran v. Cisco Sys.*, 258 F.R.D. 375 at 379. Courts do not
 19 permit a party “to avoid its obligations by filing misleading or evasive responses,
 20 or by failing to examine records within its control.” *Anderson v. Cryovac, Inc.*
 21 862 F.2d 910, 929 (1st Cir. 1988).

22 It is established that to state a claim under the UCL and FAL, “one need
 23 not plead and prove the elements of a tort. Instead, one need only show that
 24 “members of the public are likely to be deceived.” *Bank of the West v. Superior*
 25 *Court* (1992) 2 Cal. 4th 1254, 1267. Plaintiff’s UCL and FAL claims necessarily
 26 raise issues as to whether Defendant’s price comparison advertisements are
 27 “likely to deceive” and are material to a reasonable consumer, which present
 28 common issues for purposes of class certification. *Spann v. J.C. Penney Corp.*,

1 307 F.R.D. 508, 518 (C.D. Cal. 2015).

2 RFP 2 seeks documents that are directly relevant to these common
3 questions in the forms of consumer studies, surveys, research and reports
4 concerning Kohl's price comparison advertisements. Indeed, during Plaintiff's
5 deposition, Defendant marked as an exhibit and questioned Plaintiff on some
6 statements of consumers that were purportedly pulled from some type of survey,
7 study or report and which addressed their reaction to Defendant's price
8 comparison advertising. Zevin Decl. ¶14 and Ex. 10. Not only has Defendant
9 demonstrated that it is in possession of responsive documents, but it apparently
10 considers them relevant enough to use during its questioning of deponents. Yet,
11 Defendant refuses to produce all responsive documents.

12 Subsequent to the meet and confer, Defendant clarified that it would
13 "produce copies of all focus group studies concerning the pricing, labeling,
14 marketing, and advertising of merchandise sold in California or such studies that
15 are used by Kohl's in California." Zevin Decl. ¶10 and Ex. 7.

16 It is doubtful that any meaningful study would be limited to just California
17 consumers, and Plaintiff is entitled to discover all relevant studies, reports,
18 surveys or research on this issue that are in Defendant's possession. Defendant
19 does not deny that it has other responsive documents, including consumer
20 surveys, nor does it deny that such documents are relevant to this litigation.
21 Kohl's should not be allowed to cherry pick which responsive documents it will
22 produce, and Plaintiff should be entitled to the entirety of such relevant evidence
23 to the extent that it is in Kohl's possession, custody or control.

24 **Defendant's Contentions with Respect to Its Response to RFP 2**

25 Plaintiff has defined the scope of this controversy. Plaintiff could have
26 sought certification of a nationwide class. Instead, plaintiff has defined the
27 putative class to include only individuals who purchased products from Kohl's
28 while in the state of California. Complaint at ¶ 36. Moreover, consumer

1 behavior and perceptions vary from population-to-population. Consumers in, for
2 example, Maine, are not the same as consumers in California. Accordingly,
3 information concerning areas outside of California is not relevant to this
4 litigation.

5 Remarkably, plaintiff claims that “[i]t is doubtful that any meaningful
6 study would be limited to just California consumers,” but does not explain why
7 this is so. *See Howard v. Hedgpeth*, 2010 WL 5422580, at *2 (E.D. Cal. Dec.
8 21, 2010) (“If Defendants object to any one of Plaintiff’s discovery requests, it is
9 Plaintiff’s burden in his motion to compel to demonstrate why the objection is
10 not justified or why the response is deficient. Plaintiff must inform the Court . . .
11 why the information sought is relevant and why Defendant’s objections are not
12 justified or the response is not complete.”). Because this suit concerns only
13 California consumers, it is difficult to imagine how a study of those consumers
14 would not be “meaningful.” Kohl’s has offered to produce studies, to the extent
15 they exist, concerning California consumers because the putative class consists
16 of such consumers, not because it is attempting to “cherry pick” evidence.

17 **Request For Production No. 12**

18 All Documents related to the ordering or purchasing from the
19 manufacturer(s) of the products purchased by Plaintiff[] as alleged in the
20 Complaint.

21 **Response to Request for Production No. 12**

22 Kohl’s hereby incorporates the Preliminary Statement and General
23 Objections. Kohl’s further objects that the request is overbroad and unduly
24 burdensome with respect to, among other things, the period for which
25 information is sought. Kohl’s further objects that the request seeks information
26 regarding ordering and purchasing information and periods, among other things,
27 that is not relevant to any party’s claims or defenses and not proportional to the
28 needs of the case. Kohl’s further objects to the extent that the request seeks

1 trade-secret or confidential information, as no protective order is in place.
2 Kohl's further objects that the request is vague, ambiguous, and unintelligible as
3 to the phrase "related to the ordering or purchasing from the manufacturer."

4 **Plaintiff's contentions concerning RFP No. 12**

5 During the meet and confer process, Plaintiff clarified that she seeks
6 purchase orders or contracts for the manufacture and or supply of all class-related
7 products that she purchased. Plaintiff believes that this documentation may be
8 relevant to a number of issues, including the prices at which Kohl's intends to
9 sell such products, which is often stated in purchase orders or manufacturing
10 contracts. Plaintiff also clarified that she only seeks responsive documents
11 pertaining to the proposed class period of July 21, 2011 through the date of
12 production.

13 In response, Kohl's stated that it would consider this request further. To
14 date, no further response has been provided and no responsive documents have
15 been produced.

16 **Defendant's contentions concerning RFP No. 12**

17 The parties have reached a compromise on this Request.

18 **Request For Production No. 35**

19 Documents showing the names and last known home addresses, e-mail,
20 and telephone numbers of all customers who have purchased private or exclusive
21 branded products offered or [sic] at a discounted sale price of 30% or more in
22 Kohl's California Stores during the Relevant Time Period.

23 **Response to Request for Production No. 35**

24 Kohl's hereby incorporates the Preliminary Statement and General
25 Objections. Kohl's further objects that the request is overbroad and unduly
26 burdensome with respect to, among other things, the persons, products, stores,
27 and period for which information is sought. Kohl's further objects that the
28 request seeks information regarding persons, products, stores, and periods,

1 among other things, that is not relevant to any party's claims or defenses and not
2 proportional to the needs of the case. Kohl's further objects to the extent that the
3 request seeks trade-secret or confidential information, as no protective order is in
4 place. Kohl's further agrees that this request is premature and improper as no
5 class has been certified.

6 Subject to, and without waiving, the foregoing, Kohl's agrees not to
7 contest that numerosity is met for purposes of class certification.

8 **Plaintiff's Contentions with Respect to Defendant's Response to RFP 35**

9 Plaintiff is entitled, as a matter of law, to discover "any non-privileged
10 matter that is relevant to any party's claim or defense...Generally, the purpose of
11 discovery is to remove surprise from trial preparation so the parties can obtain
12 evidence necessary to evaluate and resolve their dispute." Fed. R. Civ. P.
13 26(b)(1); *Duran v. Cisco Sys.*, 258 F.R.D. 375, 378 (C.D. Ca. 2009); *Moon v.*
14 *SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005). "Relevant information
15 for purposes of discovery is information 'reasonably calculated to lead to the
16 discovery of admissible evidence.'" *Withers. V. eHarmony, Inc.*, 267 F.R.D. 316,
17 319 (C.D. Ca. 2010).

18 During the meet and confer process, Kohl's counsel admitted that it is in
19 possession of responsive documents. Accordingly, there is absolutely no
20 reasonable justification for its boilerplate objections to this request. The
21 customers who purchased private or exclusive branded products at discounted
22 sale prices during the relevant time period (defined as July 21, 2011 through the
23 date of production) are both putative class members and witnesses to (and
24 victims of) the exact illegal business practices that are at issue in this matter.
25 Further, the requested information (including contact information) is relevant to
26 the commonality, typicality, superiority and predominance elements of Federal
27 Rule 23, as well as to the ability to provide notice should a class be certified.

28 During the meet and confer process, Kohl's offered to provide a written

1 response “delineating the general types of information Kohl’s collects about its
2 customers and their purchases. . . .” Plaintiff responded that this may be an
3 acceptable compromise prior to class certification, but it would depend on the
4 actual details and level of specificity provided. To date, no such written response
5 has been provided.

6 **Defendant’s Contentions with Respect to its Response to RFP 35**

7 The parties have reached a compromise on this Request.

8
9 IT IS SO STIPULATED.

10 Dated: January 15, 2016

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1 Dated: January 15, 2016

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8 Delaware Corporation; KOHL'S
9 CORPORATION

10 The undersigned hereby certifies pursuant to Local Rule 5-4.3.4 that all
11 signatories listed above concur in the content and have authorized this filing.

12 Dated: January 15, 2016

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